



Utah Rivers
Council

CQ572

VIA FACSIMILE AND USPS

Chairman James L. Connaughton
Council on Environmental Quality
NEPA Task Force
P.O. Box 221150
Salt Lake City, Utah 84122

September 23, 2002

Dear Chairman Connaughton:

Please accept the following comments from Utah Rivers Council (URC) regarding the CEQ NEPA Task Force. URC is a community based, grassroots, non-profit organization with over 1,000 members. URC members, board of directors and staff have had extensive experience with NEPA processes since our founding in 1995. We've worked to ensure informed decisionmaking, full public participation, full disclosure of environmental impacts of proposed actions, and complete study of all possible project alternatives in order to protect Utah's rivers and riparian areas.

NEPA was passed by Congress in 1969 with the intent of providing fully informed agency decisionmaking and meaningful public participation in decisions that affect the environment, and it remains one of the most important environmental laws today. There is very little opportunity for most citizens to get involved in public decisionmaking because there are few laws at the local and state level in Utah that mandate public participation. Also many decisionmakers in Utah are appointed and therefore unresponsive to citizen criticism. NEPA allows the community to ask questions and hold these officials accountable.

As it is currently interpreted, NEPA allows for federal agencies to implement actions in a way that takes into consideration the impacts on the environment, provides for full study of the range of possible agency actions (alternatives), allows the opportunity for full and meaningful public participation before final decisions, and allows industry to receive approval without unreasonable delays. Unfortunately, there has been consistent pressure on federal agencies in Utah to "fast track," "expedite" or "streamline" the NEPA process in order to cater to industry and state interests. All too often this happens at the cost of the very things NEPA was designed to ensure: a complete study of likely and cumulative impacts, full public participation, and a full and diverse range of alternatives.

In fact, in many cases NEPA poses little burden on federal agency actions. Full environmental review is only required for a small portion of agency actions. Other projects require only a Finding of No Significant Impacts (FONSI) or Environmental Assessment. Even when full NEPA review is conducted it often does not significantly delay projects. It must be



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remembered that NEPA is a procedural not substantive statute. NEPA does not stop projects. It simply requires that all reasonable alternatives and environmental impacts be openly and fully analyzed.

When projects are justified and supported by the public, NEPA implementation as currently required by the CEQ is not an overly time-consuming burden. The delays, redundancies and inefficiencies that industry and some agencies complain about occur when NEPA is not followed and citizens are forced take legal action.

Don't weaken public participation

URC encourages the task force to ensure that proposed changes to streamline NEPA implementation strengthen, not weaken requirements that agencies fulfill the informed decisionmaking and meaningful public participation goals of NEPA.

With this goal in mind we suggest that the Task Force recommend early and substantive involvement of the public and regulatory agencies as agencies begin the NEPA process. The current process in many agencies is to craft an EIS that simply justifies a particular preferred alternative without necessarily taking all environmental impacts or all reasonable alternatives into account. Including the public earlier in the process will encourage more creative decisionmaking with a broader array of options and lessen the likelihood of public opposition.

Don't limit study of purposes, objectives, and alternatives

Streamlining advocates have proposed limiting agency analysis of the purpose and need for projects and full consideration of reasonable alternatives. These requirements are at the heart of NEPA. Without careful analysis of purpose, need and alternatives for projects, agencies and the public cannot make informed decisions for local communities and the environment.

Even under current NEPA guidelines, URC often finds that much less than the full array of alternatives are analyzed. Current regulations should be strengthened not weakened in this area. URC calls on the Task Force to provide recommendations to fully develop the full range of reasonable alternatives, taking a hard look at utilizing mitigation measures and requiring the use of alternative and developing technologies to provide the public a meaningful opportunity to assess how the proposed action will affect the environment based on all methods and manners of proceeding.

End fragmentation of analysis and recommend analysis of cumulative impacts

A major deficiency in implementing NEPA concerns the related areas of fragmenting analysis and improperly assessing and disclosing cumulative impacts. Current CEQ regulations provide proper guidance on these issues, if they were followed by the agencies. The type of actions to be considered in determining the scope of an environmental impact statement include the following:

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Similar actions ... that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement. 40 C.F.R. 1508.25(a)(3).

In addition, when preparing an EIS for broad actions, agencies should evaluate the proposal, "geographically, including actions occurring in the same general location, such as [a] body of water, region, or metropolitan area," and, "generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter." 40 C. F. R. 1502.4(c)(1), (2). The duty to study all impacts of a proposal extends to connected actions or those "that are closely related and therefore should be discussed in the same impact statement." 40 C.F.R. 1508.25(a)(1). Connected actions include those that "[c]annot or will not proceed unless other actions are taken previously or simultaneously," or "[a]re interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. 1508.25(a)(1)(ii), (iii).

Many projects URC has commented on have been unjustifiably fragmented into separate projects and separate environmental impact statements. The result of such fragmentation is an unrealistic projection of impacts for a particular project — indeed, if the projects are not fragmented, but combined, a much clearer and more realistic picture of the actual impacts can be obtained. Agencies may have a tendency to fragment analyses so that the separate NEPA documents can more easily conclude a FONSI, thereby avoiding an EIS.

Make supporting information available to the public

URC, when reviewing NEPA documents, often must seek supporting or primary information from the administrative record. In some cases we have been forced to file FOIAs to obtain the information. As agencies go through the NEPA process, these documents should be identified and made accessible to the public on the world wide web or in hard copies.

Don't extend categorical exclusions

The very existence of Categorical Exclusion policy (CE) is redundant. NEPA already allows for an abbreviated environmental review of those activities that do not pose a significant impact, a Finding of No Significant Impact (FONSI). A more efficient way to streamline the process would be to eliminate the CE exemption altogether. The proposed changes are in response to a study that current CE policy results "in higher administrative costs to the agency and delayed service to the customer." With this in mind, rather than broadening CE, it should be eliminated.

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Conclusion

Thank You for considering the URC's ideas and recommendations for the NEPA Review Task Force. We believe the existing NEPA regulatory framework has the necessary tools in place for an effective and efficient process that can work for all parties involved if agencies would simply follow these clear guidelines. The failure to do so is where the NEPA process breaks down. When the public is intentionally left out of the NEPA process, agencies fail to develop a full range of reasonable alternatives, and agencies rely on old outdated documents or bad science, the NEPA process deteriorates. The result, citizen enforcement or lawsuits with the agency required to supplement or redo the EIS, is what industry perceives as "delay" and agencies refer to as "backlog." A better way to view the NEPA process is to realize that if things are done correctly the first time around, instead of agency shortcuts, the result will be an "expedited," "streamlined" process. Please keep this in mind when making recommendations for the future of NEPA.

Sincerely,



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